

CLAIM OF TAKESHI ENDO

[No. 146-35-2253. Decided October 2, 1950]

FINDINGS OF FACT

This claim, in the amount of \$1,134, was received by the Attorney General on April 7, 1949, and relates to loss from the sale of household furniture. The claim originally also included an alleged loss of California State unemployment benefits in the amount of \$360, but this item was subsequently withdrawn by claimant of his own volition. Claimant was born in San Francisco, California, on November 17, 1916, of Japanese parents. At no time since December 7, 1941, has claimant gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 568 Hemlock Street, San Francisco, California, and he was living at 1343 Broderick Street, San Francisco, California, when evacuated on May 11, 1942, under military orders pursuant to Executive Order No. 9066 of February 19, 1942, to the Pomona Assembly Center at Pomona, California, and thence to the Heart Mountain Relocation Center in Park County, Wyoming. On March 30, 1942, claimant, believing his evacuation to be imminent, proceeded to sell his household furniture for \$150, the highest price that he could obtain. Claimant would not have sold his furniture but for his impending evacuation. Because of conditions prevailing at the time of sale, no free market was available to claimant for disposing of his property at its fair and reasonable value, which was \$593.96. Claimant acted reasonably in disposing of his property by sale in the circumstances then confronting him. Claimant, presently divorced, was married at the time of the sale, but the items involved had been acquired and paid for by him prior to his marriage and had

been retained by him as his separate property subsequent thereto. Claimant's loss has not been compensated for by insurance or otherwise.

REASONS FOR DECISION

The evidence of claimant's loss consists of his sworn statements and these have been fully corroborated by investigation, including interviews with persons having knowledge of claimant's ownership and disposal of the property, examination of the records of the furniture company from whom most of the items were bought, and examination of the records of the furniture company to whom the property was sold. Claimant sold his furniture on March 30, 1942, although he was not evacuated until May 11, 1942. However, General DeWitt's Public Proclamation No. 1, issued March 2, 1942, together with his press release of the following day, had made it abundantly clear to persons of Japanese ancestry in the area that they were soon to be evacuated. Cf. *The Wartime Handling of Evacuee Property*, U. S. Department of the Interior (GPO 1946), p. 15. Public Proclamation No. 2, issued March 16, 1942, further emphasized the fact and Public Proclamation No. 3 of March 24, 1942, established a curfew applicable to all persons of Japanese ancestry in the area. See *Hirabayashi v. United States*, 320 U. S. 81, 88. Finally, Public Proclamation No. 4, issued March 27, 1942, "froze" all persons of Japanese ancestry in the area as of midnight March 29. *Ibid.*, p. 89. Plainly, therefore, on March 30, 1942, claimant was warranted in believing that his evacuation was near and that he had better take action with respect to his property.

A valuation of claimant's property as of the time of its sale in the amount of \$593.96 is reasonable. Of this amount, claimant received the sum of \$150 as proceeds from the sale. His resultant loss, therefore, was \$443.96. Since claimant had no free market and acted reasonably in selling in the circumstances confronting him, the loss is allowable. *Toshi Shimomaye*, ante p. 1. Claimant, pres-

ently divorced, was married at the time of the sale. The record contains a disclaimer of any interest by his former wife, however, and, further, affirmatively shows that the property involved was bought and paid for by claimant prior to his marriage and was not converted into marital community subsequent thereto. It is clear, therefore, that claimant was the sole owner at the time of sale and that the property involved represented his separate personalty. *Deering's Civil Code of California* (1949), § 163. Claimant is accordingly entitled to receive the sum of \$443.96 under the aforementioned Act as compensation for loss of personal property as a reasonable and natural consequence of his evacuation.